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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/714,568	11/16/2000	Philippe Choquier	MS147193.2	5480

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EXAMINER

PHAN, THAI Q

ART UNIT	PAPER NUMBER
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2128

DATE MAILED: 12/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/714,568

Applicant(s)

CHOQUIER ET AL.

Examiner

Thai Q. Phan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 July 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-44 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-44 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on: _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This Office action is in response to applicants' amendment filed on 07/15/2004.

Claims 1-44 are pending in this action.

Drawings

The corrected drawing for Fig. 3 filed on 07/15/2004 has been place in the record. The drawings are thus acceptable for examination.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lumelsky et al, US patent no. 6,463,454 B1 in view of Colby et al, US patent no. 6,625,643 B1.

As per claim 1, Lumelsky discloses a method and system for providing services to users over a communication network, and managing load distribution and resource availability for user on an internet environment with feature limitations very similar to the claimed invention. According to Lumelsky, the environment architecture includes a network manager similar to the claimed network topology manager for managing network resources such as network topology connection and services availability (Fig. 12, col. 9, lines 1-20, for example), an application manager for maintaining applications

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on the network (Figs. 4, 12, col. 4, lines 37-55, col. 6, lines 45-50, col. 6, line 61 to col. 7, line 24, for example), wherein the network manager in communication with application managers to initiate a scaling of the applications associated with the application manager to the network members or resources to other network members or resources as claimed. Lumelsky does not expressly disclose the claimed topology manager. Such claimed topology manager is however well-known in the art. In fact, Colby teaches topology managers (20), Figures 1 and 2, for network management. The topology managers in a network management are to schedule resources in the network system, manage the network, broadcast events over a network, transfer message data, etc. (col. 4, line 10 to col. 5, line 4, for example), to commit system resources such as network servers, firewalls, network interconnects, etc.

It would have been obvious for practitioner in the art at the time of the invention was made to combine or use a network topology as taught in Colby into Lumelsky load distributed network to provide commit resources for service, maintain redundant network connection, configure the resource management, data availability, etc. as taught in Colby, see col. 5, line 59 to col. 9, line 48.

As per claim 2, Lumelsky discloses network manager or topology manager as claimed is a member of network elements for network applications (col. 23, lines 38-54).

As per claim 3, Lumelsky and Colby disclose the network management as claimed is distributed over and across the network members for resource deployment and availability.

As per claim 4, Lumelsky discloses process synchronization for planning and distribution (col. 7, lines 25-40).

As per claim 5, Lumelsky discloses a manager controller as claimed (Fig. 4).

As per claim 6, Lumelsky discloses fault tolerance, which implied failover and failover selected by administrator.

As per claims 7-28, Lumelsky discloses the claimed limitations such as resource availability, hierarchical member for controller, system replication, etc. in order to distribute the load and manage resources in a network (col. 7, lines 5-24, col. 9, lines 1-20, col. 10, lines 5-48).

As per claim 29, Lumelsky discloses a method and system for providing services to users, and managing load distribution and resource availability for user on an internet environment with feature limitations very similar to the claimed invention. According to Lumelsky, the environment architecture includes a network manager similar to the claimed network topology manager for managing network resources and services availability (Fig. 12), an application manager for maintaining applications on the network (Figs. 4, 12, col. 4, lines 37-55, col. 6, lines 45-50, col. 6, line 61 to col. 7, line 24, for example), wherein the network manager in communication with application managers to initiate a scaling of the applications associated with the application manager to the network members or resources to other network members or resources as claimed. Lumelsky does not expressly disclose topology manager for communication in between members of the network as claimed. Such claimed topology manager is however well-known in the art. In fact, Colby teaches topology managers (20), Figures 1 and 2. The

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topology managers for network management are to schedule resources in the network system, manage the network, broadcast events over a network, transfer message data, etc. (col. 4, line 10 to col. 5, line 4, for example), to commit system resources such as network servers, firewalls, network interconnects, etc.

It would have been obvious for practitioner in the art at the time of the invention was made to combine or use a network topology as taught in Colby into Lumelsky load distributed network to provide commit resources for service, maintain redundant network connection, configure the resource management, data availability, etc. as taught in Colby, see col. 5, line 59 to col. 9, line 48.

As per claims 30-33, Lumelsky discloses load balancing, replicating applications to the network resources, managing network failure, etc. as claimed (Figs. 5-12, cols. 7, 9, 10-13, 20-23).

As per claim 34, Lumelsky discloses a method and system for providing services to users, and managing load distribution and resource availability for user on an internet environment with feature limitations very similar to the claimed invention. According to Lumelsky, the environment architecture includes a network manager similar to the claimed network topology manager for managing network resources and services availability (Fig. 12), an application manager for maintaining applications on the network (Figs. 4, 12, col. 4, lines 37-55, col. 6, lines 45-50, col. 6, line 61 to col. 7, line 24, for example), wherein the network manager in communication with application managers to initiate a scaling of the applications associated with the application manager to the network members or resources to other network members or resources as claimed.

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Lumelsky does not expressly disclose the claimed limitation of a topology manager for node communications. Such claimed topology manager is however well-known in the art. In fact, Colby teaches topology managers (20), Figures 1 and 2 for network management. The topology managers in a network are to schedule resources in the network system, manage the network, broadcast events over the network, transfer message data, etc. (col. 4, line 10 to col. 5, line 4, for example), to commit system resources such as network servers, firewalls, network interconnects, etc.

It would have been obvious for practitioner in the art at the time of the invention was made to combine or use a network topology as taught in Colby into Lumelsky load distributed network to provide commit resources for service, maintain redundant network connection, configure the resource management, data availability, etc. as taught in Colby, see col. 5, line 59 to col. 9, line 48.

As per claims 35-44, Lumelsky discloses the claimed limitations for balancing load, resource management efficient, replicating applications, configuring network server, broadcasting message, content replica threshold, etc. (cols. 9, 10, col. 19, line 35 to col. 27, line 21, col. 28, lines 6-15, for example).

Response to Arguments

3. Applicant's arguments with respect to claims 1-44 have been considered but are moot in view of the new ground(s) of rejection.

In response to applicants' argument Lumelsky does not expressly disclose a network topology as in the claims, the examiner agrees. Such claimed topology manager is however well-known in the art. In fact, Colby teaches topology managers

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(20) for network management, Figures 1 and 2. The topology managers are to schedule resources in the network system, manage the network, broadcast events over the network, transfer message data, etc. (col. 4, line 10 to col. 5, line 4, for example), to commit system resources such as network servers, firewalls, network interconnects, etc.

It would have been obvious for practitioner in the art at the time of the invention was made to combine or use a network topology as taught in Colby into Lumelsky load distributed network to provide commit resources for service, maintain redundant network connection, configure the resource management, data availability, etc. as taught in Colby, see col. 5, line 59 to col. 9, line 48.

Conclusion

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

1. US patent no. 5,956,489, issued to San Andres et al, on Sept. 1999
2. US patent no. 6,304,549 B1, issued to Srinivasan et al, on Oct. 2001
3. US patent no. 6,415,323 B1, issued to McCanne et al, on July 2002
4. US patent no. 6,466,980 B1, issued to Lumelsky et al, on Oct. 2002
5. US patent no. 6,625,643 B1, issued to Colby et al, on Sept. 2003
6. US patent no. 6,768,901 B1, issued to Osborn et al, on July 2004
7. US patent application publication no. US 2001/0042118 A1 to Miyake et al.
8. US patent application publication no. US 2002/0174227 A1 to Hartsell et al.

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5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thai Q. Phan whose telephone number is 571-272-3783.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jean Homere can be reached on 571-272-3780. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

6. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Nov. 24, 2004



Thai Phan
Patent Examiner
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